IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2454 of 2006

Commissioner of Income Tax
Madurai. .. Appellant

Vs.

M/s.Southern Roadways Ltd.,
Lakshmi Buildings,
Kochadai, Madurai 625 016
.. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 28.4.2006 in ITA Nos.96/Mds/2000, for the assessment year 1999-2000 against ITA No.164/2002-03 order dt.16.10.2003 on the file of the Commissioner of Income Tax, Appeals-I, Madurai and PAN/GIR No.AACCS1478B/CX-4060 order dt. 6.3.2002 on the file of the Dy. Commissioner of Income Tax, Company Circle-I, Madurai.

For Appellant : Ms.Pushya Sitaraman, Sr.SC for IT

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 28.4.2006 made in ITA Nos.96/Mds/2000 for the assessment year 1999-2000.

2. The Revenue is the appellant. The Assessing Officer disallowed the claim of replacement expenditure of Vibrator 0.5 HP Motor and cost of repairing Driver Cabins and Oil Tanker holding that replacement of old by new machinery cannot be treated as revenue expenditure. The assessing officer also disallowed the claim of assessee towards purchase of software treating the same as capital expenditure. The Commissioner of Income-tax (Appeals), however, decided the issues in

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favour of the assessee. The Tribunal, on appeal by the Revenue, held the issues in favour of the assessee. Hence, this appeal by the Revenue raising the following questions of law:-

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as revenue expenditure ?
>
> 2.Whether in the facts and circumstances of the case, the Appellate Tribunal was right in holding that the expenditure incurred on the upgradation of software is revenue expenditure?

3. With regard to 1st question, the question whether the expenditure on replacement of machinery is capital or revenue is not determined by the treatment given in the books of account or in the balance sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. In the instant case, the Commissioner and the Appellate Tribunal, finding that replacement of machinery is revenue expenditure, held that the claim of the assessee cannot be disallowed.

4. This Court, in COMMISSIONER OF INCOME-TAX v. JANAKIRAM MILLS LTD. (2005) (275 ITR 403), held that all plant and machinery put together amounts to a complete spinning mill which is capable of manufacturing yarn and hence, each replaced machine could not be considered as an independent one and no intermediate marketable product was produced.

5. In view of the ratio laid down by this Court in the decision cited supra, we hold that the expenditure on replacement of machinery is revenue expenditure and therefore, the Tribunal was right in allowing the claim of the assessee. Accordingly, the 1st question is answered in the affirmative, against the Revenue and in favour of the assessee.

6. With regard to the 2nd question, viz., whether the expenditure incurred on the upgradation of software is revenue expenditure, the assessee did not claim any expenditure for installation of new computers, but claimed the expenditure for upgradation of existing computers. Further, the expenditure was incurred for improving the efficiency of the existing system with a view to keep pace with improvement of technology and no machinery was brought into existence. Such expenses incurred by the assessee for enhancement of efficiency, in our considered opinion, is nothing but an upgradation of computers for achieving the desired result and therefore, the same has to be treated as revenue expenditure.

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7. The Apex Court in Alembic Chemical Works Co. Ltd. (177 ITR 377), after referring to B.P. Australia Ltd. v. Commissioner of Taxation of the Commonwealth of Australia [1966] AC 224 (PC), held that,

> "What is capital expenditure and what is revenue are not eternal verities but must need be flexible so as to respond to the changing economic realities of business. The expression 'asset or advantage of an enduring nature' was evolved to emphasise the element of a sufficient degree of durability appropriate to the context."

It was also held that the phrase 'enduring benefit' is not thinking of advantages that are permanent. There is a difference between the lasting and the everlasting.

8. In the light of the above ratio laid down by the Supreme Court, we are of the view that upgradation of computers by changing certain parts thereby enhancing the configuration of the computers for improving their efficiency, but without making any structural alterations is not of an enduring nature. The expenditure incurred by the assessee has therefore to be treated as revenue expenditure.

9. Similar view has been taken by this Court in T.C.Nos.1397 and 1398 of 2005, by judgment dated 20.1.2006. Accordingly, the 2nd question is answered in the affirmative, against the Revenue and in favour of the assessee.

In the result, the tax case appeal stands dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras 'C' Bench, III Floor,
Rajaji Bhavan,Madras-90.

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2.The Commissioner of Income-
Tax (Appeals) I, Madurai.

3.The Deputy Commissioner
of Income-tax, Company Circle-1,
Madurai-2.

4.The Commissioner of Income Tax,
Madurai.

+1cc to M/s.Pushya Sitaraman, Advocate Sr 50620

JE(CO)
km/16.11.

HIGH COURT OF JUDICATURE MADRAS
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